

Appl. No. 10/758,997
Docket No. P155
Amdt. dated July 24, 2009
Reply to Office Action mailed on April 24, 2009
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 19, 27 – 33, and 39 are pending in the present application. No additional claims fee is believed to be due. Claims 8 – 14, 27 – 33 and 39 have been withdrawn as a result of an earlier restriction requirement.

Rejection Under 35 U.S.C. § 103(a) Over Chu in view of Burkhalter, Sunvold, Fahey, Sunvold '258, Jezek and Desforges

Claims 1 – 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chu et al. (US Publication No. 2002/0025325)(“Chu”) in view of Burkhalter et al (The Journal of Nutrition, 2001)(“Burkhalter”), Sunvold et al (Journal of Animal Science, 1995)(“Sunvold”), Fahey et al (Journal of Animal Science, 1990)(“Fahey”), Sunvold (US Patent No. 5,932,258)(“Sunvold '258”), Jezek et al (Chemical and Biochemical Engineering Quarterly, 1996)(“Jezek”), and Desforges et al (US Patent No. 5,252,136)(“Desforges”). Applicants respectfully traverse this rejection.

Chu is directed to “methods and compositions both for providing protection against disease in an animal and for inducing increased intake of an orally administered vaccine by an animal.” *Abstract*. Burkhalter is directed to an experiment “conducted to evaluate the effects of soybean hulls (SH) containing varying ratios of insoluble:soluble fiber (I:S) on nutrient digestibilities and fecal characteristics of dogs.” *Abstract*. Sunvold discloses “two experiments were conducted to evaluate the addition of single sources and blends of dietary fibers to cat diets.” *Abstract*. Fahey discloses the evaluation of the “optimal level of beet pulp (BP) inclusion in a meat-based dog diet and the effects of graded levels of dietary BP on fecal excretion responses and mean retention time of marked fiber in the gastrointestinal tract of the dog.” *Abstract*. Sunvold '258 discloses that a “composition and process of use are provided to improve glucose metabolism in companion animals by controlling the postprandial glycemic response in those animals.” *Abstract*. Jezek discloses that “[c]onsiderable quantities of dietary fibres are contained in sugar beet pulp as by products of saccharosse production.” *Abstract*. Desforges discloses a “sugar composition consisting of from 90 to 99% by weight sugar and from 10 to 1% by weight of a non-gelling water-soluble dietary fibre.” *Abstract*. Chu, Burkhalter, Sunvold,

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Fahey, Sunvold '258, Jezek, and Deforges, however, fail to teach the liquid composition of the current application.

Claim 1 is directed to, *inter alia*, a liquid composition comprising beet pulp, a medicament, a flavorant, and water, wherein the liquid composition is essentially free of sugars and is adapted for use by a companion animal.

As noted in the Office Action and as best understood by Applicants, Chu fails to teach the addition of beet pulp to its composition. The Office Action is utilizing the disclosures of Burkhalter, Sunvold, Fahey, Sunvold '258, Jezek and Deforges for the disclosure of beet pulp. As best understood by Applicants, Burkhalter, Sunvold, Fahey, and Sunvold '258 all disclose extruded and dried food compositions and, as best understood by Applicants, Jezek and Deforges disclose methods of production of dietary fibers from sugar beets. Additionally, as best understood by Applicants, Deforges discloses that the "object of the present invention is to provide a sugar composition." Col. 2, lines 18 – 21. Deforges, therefore, is teaching away from the claims of the current application. As best understood by Applicants, the objective of Deforges is to produce a sugar composition whereas the claims of the current application are directed towards a liquid composition which is essentially free of sugars. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *Tec Air Inc. v. Denso Manufacturing Michigan Inc.*, 192 F.3d 1353 (Fed. Cir. 1999). As best understood by Applicants, Burkhalter, Sunvold, Fahey, Sunvold '258, Jezek and Deforges, either alone or in combination, all fail to teach the incorporation of beet pulp into a liquid composition such as claimed in the current application. As best understood by Applicants, Chu, Burkhalter, Sunvold, Fahey, Sunvold '258, Jezek and Deforges, either alone or in combination, fail to teach a liquid composition comprising beet pulp, a medicament, a flavorant, and water wherein the compositions are essentially free of sugars. As best understood by Applicants, Chu, Burkhalter, Sunvold, Fahey, Sunvold '258, Jezek and Deforges, either alone or in combination, fails to provide one of ordinary skill with a motivation to combine the references to arrive at the claims of the current application. As best understood by Applicants, the combination of Chu, Burkhalter, Sunvold, Fahey, Sunvold '258, Jezek and Deforges fail to provide a reasonable expectation of success in arriving at

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the claims of the current application. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103(a) Over Tinembart in view of Chu, Burkhalter,
Sunvold, Fahey, Sunvold '258, Jezek, and Desforges

Claims 1 – 7 and 15 – 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Tinembart in view of Chu, Burkhalter, Sunvold, Fahey, Sunvold '258, Jezek and Desforges. Applicants respectfully traverse this rejection.

Tinembart is directed to a:

veterinarian preparation for fleas is described, which consists of an amount that is effective against fleas of a combination of a compound of formula (I), wherein R₁ hydrogen, C₁-C₆-alkyl or C₃-C₇-cycloalkyl; R₂ is hydrogen, C₁-C₆-alkyl, or C₃-C₇-cycloalkyl; R₃ is hydrogen or C₁-C₆-alkyl; and A is heterocycly which is unsubstituted or substituted once or repeatedly by identical or different halogen atoms; and a compound of formula (II), wherein X is halogen, X₁ is hydrogen or halogen; X₂ is hydrogen or halogen; Y is partially or completely halogenated C₁-C₆-alkoxy which is interrupted by one oxygen atom, or partially or completely halogenated C₂-C₆-alkenyl; Y₁ is hydrogen or halogen; Y₂ is hydrogen or halogen; Y₃ is hydrogen or halogen; Z₁ is hydrogen or C₁-C₃-alkyl; and Z₂ is hydrogen or C₂-C₃-alkyl; and a physiologically acceptable formulation excipient.

Abstract. Tinembart, Chu, Burkhalter, Sunvold, Fahey, Sunvold '258, Jezek and Deforges, either alone or in combination, however, fail to teach the liquid compositions of the current application.

Claim 1 is as noted above. Claim 15 is directed to, *inter alia*, a kit comprising a container and a liquid composition housed within the container wherein the liquid composition comprises beet pulp, a medicament, a flavorant, and water, wherein the liquid composition is essentially free of sugars and is adapted for use by a companion animal. Claim 17 is directed to, *inter alia*, a kit comprising a compartmentalized container and one or more compositions comprising beet pulp, a medicament, a flavorant, and water wherein the composition is essentially free of sugars and is adapted for use by a companion animal. Claim 19 is directed to, *inter alia*, a kit comprising a compartmentalized container, and a first composition comprising a medicament housed in a first compartment and a composition comprising a flavorant and water housed in a

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compartment that is not the first compartment, and wherein the compositions are essentially free of sugars and adapted for use by a companion animal.

As best understood by Applicants, and as noted in the Office Action, Tinembart and Chu, either alone or in combination, fail to teach compositions comprising beet pulp. The Office Action is utilizing the disclosures of Burkhalter, Sunvold, Fahey, Sunvold '258, Jezek and Deforges for the disclosure of beet pulp. As best understood by Applicants, Burkhalter, Sunvold, Fahey, and Sunvold '258 all disclose extruded and dried food compositions and, as best understood by Applicants, Jezek and Deforges disclose methods of production of dietary fibers from sugar beets. Additionally, as best understood by Applicants, Deforges discloses that the "object of the present invention is to provide a sugar composition." Col. 2, lines 18 – 21. Deforges, therefore, is teaching away from the claims of the current application. As best understood by Applicants, the objective of Deforges is to produce a sugar composition whereas the claims of the current application are directed towards a liquid composition which is essentially free of sugars. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *Tec Air Inc. v. Denso Manufacturing Michigan Inc.*, 192 F.3d 1353 (Fed. Cir. 1999). As best understood by Applicants, Burkhalter, Sunvold, Fahey, Sunvold '258, Jezek and Deforges, either alone or in combination, all fail to teach the incorporation of beet pulp into a liquid composition such as claimed in the current application. As best understood by Applicants, Tinembart, Chu, Burkhalter, Sunvold, Fahey, Sunvold '258, Jezek and Deforges, either alone or in combination, fail to teach a liquid composition comprising beet pulp, a medicament, a flavorant, and water wherein the compositions are essentially free of sugars. As best understood by Applicants, Tinembart, Chu, Burkhalter, Sunvold, Fahey, Sunvold'258, Jezek and Desorges, either alone or in combination, fails to provide one of ordinary skill with a motivation to combine the references to arrive at the claims of the current application. As best understood by Applicants, the combination of Tinembart, Chu, Burkhalter, Sunvold, Fahey, Sunvold '258, Jezek and Deforges fail to provide a reasonable expectation of success in arriving at the claims of the current application. Applicants respectfully request reconsideration and withdrawal of the rejection.


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Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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